

The Texas Forensic Science Commission (“Commission”) proposes new rules to 37 Tex. Admin. Code Chapter 651 to add Subchapter C related to its newly created Forensic Analyst Licensing Program. The proposed new rules reflect adoptions made by the Commission at its May 26, 2017, August 18, 2017, November 3, 2017, and February 2, 2018 quarterly meetings in accordance with Article 38.01 §4-a, Code of Criminal Procedure.

**Fiscal Note.** The Commission has determined that for each year of the first five years the proposed rules will be in effect, the fiscal impact on state or local governments will be minimal to neutral. While it is true that the majority of the individuals subject to the licensing requirement are employees of state, county, city, or local laboratories, the rules do not impose any fee or other financial requirement on any laboratory. The proposed fees associated with the license are to be paid by individual licensees as they are in numerous other professions under Texas law. The fees are expressly authorized by statute for the sole purpose of administering the State's Forensic Analyst Licensing Program. *See* TEX. CODE CRIM. PROC. art. 38.01 § 4-a. While a laboratory may choose to pay this fee for its employees, it is not a requirement of the proposed rules. Some labs may incur minor administrative costs associated with implementing the licensing requirements imposed by the proposal. Examples include time spent proctoring the required general forensic exam for employees (time for personnel either administering or taking the exam), or should laboratories so choose, in providing examiners time off to study for the examination. The Commission is required by statute to create a licensing program for analysts that includes successful completion of education requirements, specific coursework requirements and experience, successful completion of an examination, and proficiency testing requirements as set forth in the proposed rules. The Commission considered the costs that may be associated with the administration of the exam and in giving employees time for either the exam or meeting the requirements set forth, and there is no practical way to avoid some administrative participation on the part of the laboratories while still meeting the requirements of the program’s enabling statute. For example, if the Commission were to administer the exam, employees would need to travel to an exam site which would entail more time away from the bench and a higher fee associated with external administration of the examination. With regard to the other requirements, all laboratories who have employees subject to the licensing requirements proposed herein already maintain most of the information required of analysts in order to meet current accreditation requirements. Thus, any economic impact on laboratories of submitting information they are already required to maintain pursuant to accreditation requirements is minimal to neutral.

The Commission does not anticipate any effect on local employment or the local economy as a result of the proposal. The licensing rules and requirements proposed herein are written so that all current forensic analysts can meet the requirements to obtain a license. No one currently employed will be excluded from their employment status by the proposed rules. Specific education and coursework requirements are higher for those who apply for a license after January 1, 2019. Some laboratories expressed concern regarding their ability to hire qualified lateral transfers or out-of-state applicants that cannot meet the more stringent coursework requirements. In response to these concerns, the rules provide a waiver process to address out-of-state, lateral hiring, internal promotion and addition of forensic disciplines after January 1, 2019.

**Rural Impact Statement.** The Commission expects no adverse economic effect on rural communities as the proposed rules do not impose any direct costs or fees on municipalities in rural communities.

**Public Benefit/Cost Note.** The Commission has also determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefit will be notification of the requirements related to the Commission's forensic analyst licensing program and obtaining a forensic analyst license in Texas.

**Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses.** The Commission expects any economic impact to small or micro businesses to be minimal to neutral. The Commission only accredits a total of 95 laboratories located in and outside of Texas whose individual employees are subject to the licensing requirements set forth in these proposed rules. Only 43 of those laboratories are located in Texas, and of the 43, only 11 laboratories are private laboratories (non-publicly funded) that could possibly be considered small or micro businesses in Texas. The rules do not impose any fee or other financial requirement on any laboratory. The proposed fees associated with the license are to be paid by individual

licensees as they are in numerous other professions under Texas law. The fees are expressly authorized by statute for the sole purpose of administering the State's Forensic Analyst Licensing Program. *See* TEX. CODE CRIM. PROC. art. 38.01 § 4-a. While a laboratory may choose to pay this fee for its employees, it is not a requirement of the proposed rules. Some labs may incur minor administrative costs associated with implementing the licensing requirements imposed by the proposal. Examples include time spent proctoring the required general forensic exam for employees (time for personnel either administering or taking the exam), or should laboratories so choose, in providing examiners time off to study for the examination. The Commission is required by statute to create a licensing program for analysts that includes successful completion of education requirements, specific coursework requirements and experience, successful completion of an examination, and proficiency testing requirements as set forth in the proposed rules. The Commission considered the costs that may be associated with the administration of the exam and in giving employees time for either the exam or meeting the requirements set forth, and there is no practical way to avoid some administrative participation on the part of the laboratories while still meeting the requirements of the program's enabling statute. For example, if the Commission were to administer the exam, employees would need to travel to an exam site which would entail more time away from the bench and a higher fee associated with external administration of the examination. With regard to the other requirements, all laboratories who have employees subject to the licensing requirements proposed herein already maintain most of the information required of analysts in order to meet current accreditation requirements. Thus, any economic impact on small or microbusinesses of submitting information they are already required to maintain pursuant to accreditation requirements is minimal to neutral.

**Takings Impact Assessment.** The Commission has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**Government Growth Impact Statement.** Chapter 2001, Government Code, Section 2001.0221 requires a state agency to prepare a government growth impact statement only for rules proposed by a state agency on or after the effective date of the requirement, June 15, 2017. Rules proposed before that date are governed by the law in effect on the date the rule was proposed and the former law is continued in effect for that purpose. While these rules are proposed after the effective date of the requirement, the legislation requiring the creation of the licensing program described in the proposed rules went into effect on September 1, 2015, before the effective date of the government growth impact statement requirement. The 84<sup>th</sup> Legislature required the Commission to create a licensing program by January 1, 2019 and the proposed rules are necessary to meet that requirement. *See* Tex. S.B. 1287, 84<sup>th</sup> Leg., R.S. (2015). The proposed rules create a government program as required by Tex. S.B. 1287, 84<sup>th</sup> Leg., R.S. (2015). Implementation of the proposed rules do not require creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed rules do not require any increase in legislative appropriations other than that which has already been appropriated to the Commission by the Legislature. In response to the legislative requirement to create the forensic analyst licensing program proposed in the rules, the Legislature increased the Commission's budget in fiscal year 2017 (by \$138,000 to \$638,000) and will decrease its budget in fiscal 2018 (reduced by \$110,000 to \$528,000) in anticipation of the Commission's ability to collect fees proposed by these rules to support the program. The proposed rules require an increase in fees paid to the Commission. The Commission previously required no fees because the forensic analyst program described in the rules did not exist. The rules propose fees to be paid by individual forensic analysts to support the licensing program's existence and to make up for the decrease in state funding to the program in fiscal year 2018 and beyond. The proposed rules create a new regulation as required by the 84<sup>th</sup> Texas Legislature. The proposed rules do not expand, limit, or repeal an existing regulation as the program did not exist before these proposed rules. The proposed rules increase the number of individuals subject to the rule's applicability because the requirement for forensic analysts to be licensed did not exist before the 84<sup>th</sup> Legislative Session. The proposed rule positively affects the state's economy because it proposes fees that will eventually make the program self-sustaining.

Requirement for Rule Increasing Costs to Regulated Persons. Chapter 2001, Government Code, Section 2001.0045 states that “a state agency may not adopt a proposed rule for which the fiscal note for the notice...states that the rule imposes a cost on regulated persons...unless...the state agency (1) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (2) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule.” The section does not apply, however, to rules adopted to implement legislation or to rules necessary to protect the health, safety, and welfare of the residents of this State. The rules proposed here are necessary to implement the 84<sup>th</sup> Texas Legislature’s mandate that the Texas Forensic Science Commission create a Forensic Analyst Licensing program by January 1, 2019. *See* Tex. S.B. 1287, 84<sup>th</sup> Leg., R.S. (2015). The program is new and did not exist prior adoption of these rules required to implement the legislation. Moreover, the proposed rules relate to the public safety of Texas citizens as they require forensic analysts testifying in criminal cases in Texas to meet certain minimum requirements, which are in furtherance of ensuring the integrity and reliability of forensic analysis used in criminal cases.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh Savage, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or [Leigh.savage@fsc.texas.gov](mailto:Leigh.savage@fsc.texas.gov). Comments must be received by April 9, 2018 to be considered by the Commission.

Statutory Authority. The amendments are proposed under Article 38.01 §4-a, Code of Criminal Procedure.

Cross reference to statute. The proposal affects 37 Tex. Admin. Code Chapter 651.

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TITLE 37 PUBLIC SAFETY AND CORRECTIONS  
PART 15 TEXAS FORENSIC SCIENCE COMMISSION  
CHAPTER 651 DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

SUBCHAPTER C FORENSIC ANALYST LICENSING PROGRAM

- 651.201. PURPOSE.
- 651.202. DEFINITIONS.
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- 651.207. FORENSIC ANALYST LICENSE REQUIREMENTS INCLUDING LICENSE TERM, FEE, PROCEDURE FOR DENIAL OF INITIAL APPLICATION OR RENEWAL APPLICATION AND RECONSIDERATION.
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- 651.218. CODE OF PROFESSIONAL RESPONSIBILITY.

§651.201. Purpose.

(a) Generally. This subchapter contains the Texas Forensic Science Commission (Commission) rules adopted under Article 38.01 §4-a, Code of Criminal Procedure, that govern:

(1) the Commission's forensic analyst licensing program; and

(2) the licensing of an individual forensic analyst by the Commission.

(b) Licensing sequence. To be licensed by the Commission under this subchapter, a forensic analyst must first be employed by a crime laboratory accredited by the Commission with the exception of §651.210 or §651.211 of this subchapter.

(c) Source of evidence predicate. Under Article 38.01 §4-a(b), Code of Criminal Procedure, a person may not act or offer to act as a forensic analyst unless the person holds a Forensic Analyst License, effective January 1, 2019.

§651.202. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Forensic analyst—Means a person who on behalf of a crime laboratory accredited under Article 38.01 §4-d, Code of Criminal Procedure, technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory. The term does not include a medical examiner or other forensic pathologist who is a licensed physician.

(2) Forensic analysis—Has the meaning assigned by Article 38.35, Code of Criminal Procedure. The term does not include:

(A) latent print examination;

(B) a test of a specimen of breath under Chapter 724, Transportation Code;

(C) digital evidence;

(D) an examination or test excluded by rule under Article 38.01, Code of Criminal Procedure;

(E) a presumptive test performed for the purposes of determining compliance with a term or condition of community supervision or parole and conducted by or under contract with a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, or the Board of Pardons and Paroles; or

(F) an expert examination or test conducted principally for the purpose of scientific research, medical practice, civil or administrative litigation, or other purpose unrelated to determining the connection of physical evidence to a criminal action.

(3) Forensic pathology—Includes that portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

(4) Accredited laboratory—Includes a public or private laboratory or other entity that conducts forensic analysis as defined in Article 38.35, Code of Criminal Procedure and is accredited by a national accrediting body recognized by the Commission and listed in §651.4 of this title.

(5) Physical evidence—Has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(6) Accredited university—A college or university accredited by a national accrediting body recognized by the United States Department of Education, or a foreign university with a degree program(s) recognized as equivalent by the Commission.

(7) Professional Misconduct—Professional misconduct means the actor, through a material act or omission, deliberately failed to follow the standard of practice generally accepted at the time of the forensic analysis that an ordinary forensic professional or entity would have exercised, and the deliberate act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was deliberate if the actor was aware of and consciously disregarded an accepted standard of practice required for a forensic analysis.

§651.203. Forensic Disciplines Subject to Commission Licensing; Categories of Licensure.

(a) Forensic analysis/recognized accreditation. This section describes the forensic disciplines for which accreditation by an accrediting body recognized by the Commission is required by Article 38.01, Code of Criminal Procedure and for which licensing is therefore also required.

(b) By discipline. An individual may apply to the Commission for a Forensic Analyst License for one or more of the disciplines set forth in this section. The specific requirements for obtaining a license in any of the following disciplines may differ depending upon the categories of analysis within the discipline for which the individual is qualified to perform independent casework as set forth in §651.207 of this subchapter. An individual's license shall designate the category or categories of licensure for which the individual has been approved for independent casework and for which the individual has met the requirements set forth in §651.207 of this subchapter as follows:

(1) Seized Drugs. Categories of analysis may include one or more of the following: qualitative determination, quantitative measurement, weight measurement, and volume measurement; Categories of Licensure: Seized Drugs Analyst; Seized Drugs Technician;

(2) Toxicology. Categories of analysis may include one or more of the following: qualitative determination and quantitative measurement; Categories of Licensure: Toxicology Analyst Blood Alcohol only (Non-interpretive); Toxicology Analyst (General, Non-interpretive); Toxicologist (Interpretive); Toxicology Technician;

(3) Forensic Biology. Categories of analysis may include one or more of the following: DNA-STR, DNA-YSTR, DNA-Mitochondrial, DNA-SNP, body fluid identification, relationship testing, microbiology, individual characteristic database, and nucleic acids other than human DNA; Categories of Licensure: DNA Analyst; Forensic Biology Screening Analyst; Analyst of Nucleic Acids other than Human DNA; Forensic Biology Technician;

(4) Firearms/Toolmarks. Categories of analysis may include one or more of the following: physical comparison, determination of functionality, length measurement, trigger pull force measurement, qualitative chemical determination, distance determination, ejection pattern determination, trajectory determination, product (make/model) determination, evaluation of firearm-related evidence for NIBIN suitability, performance of NIBIN entries and individual characteristic database; Categories of Licensure: Firearms/Toolmarks Analyst; Firearms/Toolmarks Technician;

(5) Document Examination. Categories of analysis may include one or more of the following: document authentication, physical comparison, and product determination; Categories of Licensure: Document Examination Analyst; Document Examination Technician;

(6) Materials (Trace). Categories of analysis may include one or more of the following: physical determination, chemical determination, physical/chemical comparison, product (make/model) determination, gunshot residue analysis, footwear and tire tread analysis, and fire debris and explosives analysis (qualitative determination); Categories of Licensure: Materials (Trace) Analyst; Materials (Trace) Technician

(c) Meaning of Technician: An individual who performs basic analytical functions under the supervision of a qualified analyst but does not evaluate data, reach conclusions or sign any report for court or investigative purposes shall be considered a technician under the disciplines set forth in this section, with the exception of a Firearms/Toolmarks Technician who may issue a report provided it is limited to a representation that a firearm was test-fired and/or cartridge cases were entered into the National Integrated Ballistics Information Network.

(d) Cross-disciplines. A laboratory may choose to assign a particular discipline or category of analysis to a different administrative section or unit in the laboratory than the designation set forth in this subchapter. Though an individual may perform a category of analysis under a different administrative section or unit in the laboratory, the individual still shall comply with the requirements for the discipline or category of analysis as outlined in this subchapter.

§651.204. Forensic Disciplines to Which the Commission Licensing Requirement Does Not Apply by Statute.

This section describes a discipline, category of analysis, or procedure that is excluded from the definition of forensic analysis or otherwise expressly exempted from accreditation by Article 38.35, Code of Criminal Procedure. No license is required for the following disciplines:

(1) latent print examination;

(2) breath specimen testing under Transportation Code, Chapter 724;

(3) digital evidence (including but not limited to computer forensics, audio, or imaging);

(4) an examination or test excluded by rule under Article 38.01 §4-d(c), Code of Criminal Procedure and set forth in Chapter 651, Subchapter A of this title;

(5) a presumptive test performed for the purposes of determining compliance with a term or condition of community supervision or parole and conducted by or under contract with a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, or the Board of Pardons and Paroles;

(6) an expert examination or test conducted principally for the purpose of scientific research, medical practice, civil or administrative litigation, or other purpose unrelated to determining the connection of physical evidence to a criminal action; or

(7) the portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

§651.205. Forensic Disciplines Exempt from the Commission Licensing Requirement by Administrative Rule.

The Commission has exempted the following categories of forensic analysis from the accreditation requirement by administrative rule and thus the licensing requirement does not apply to the following:

- (1) sexual assault examination of a person;
- (2) forensic anthropology, entomology, or botany;
- (3) environmental testing;
- (4) facial or traffic accident reconstruction;
- (5) serial number restoration;
- (6) polygraph examination;
- (7) voice stress, voiceprint, or similar voice analysis;
- (8) statement analysis;
- (9) forensic odontology for purposes of human identification or age assessment;
- (10) testing and/or screening conducted for sexually transmitted diseases;
- (11) fire scene investigation, including but not limited to cause and origin determinations;
- (12) forensic photography;
- (13) non-criminal paternity testing;
- (14) non-criminal testing of human or nonhuman blood, urine, or tissue;
- (15) a crime scene investigation team (whether or not associated with an accredited laboratory) engaged in the location, identification, collection or preservation of physical evidence;
- (16) crime scene reconstruction including blood stain pattern analysis;
- (17) forensic psychology, including profiling, memory analysis and other forms of forensic psychology; or
- (18) other evidence processing or handling that is excluded under §651.2(2) of this title (relating to Definitions);

§651.206. Exemptions from Commission Licensing Requirement for Support Personnel.

(a) Non-proficiency tested laboratory support personnel exemption. An individual who performs only support functions that do not require participation in proficiency testing in accordance with the laboratory's accrediting body requirements is not required to obtain a Forensic Analyst License.

(b) Proficiency tested laboratory support personnel waiver application.

(1) A laboratory may apply to the Commission for an exemption from the licensing requirement on behalf of personnel who are subject to accrediting body proficiency testing requirements, but perform only support functions so limited in nature (e.g., aliquoting, accessioning, data entry etc.) as to render the licensing requirement overly burdensome and impractical for those employees.

(2) The Licensing Advisory Committee shall review each support personnel waiver application and make a determination as to the applicability of the exemption under this section based on the description in (b)(1) of this section. Any laboratory that is denied a support personnel waiver request may appeal the decision to the full Commission.

(c) The exemptions in this section are limited to individuals performing support roles as described above. An individual who technically reviews or draws conclusions from or interprets forensic analysis must obtain a Forensic Analyst License even if he or she is not required to be proficiency tested by the laboratory's accrediting body.

§651.207. Forensic Analyst License Requirements Including License Term, Fee, and Procedure for Denial of Initial Application or Renewal Application and Reconsideration.

(a) Issuance. The Commission may issue an individual's Forensic Analyst License under this section.

(b) Application. Before being issued a Forensic Analyst License, an applicant shall:

(1) demonstrate that he or she meets the definition of Forensic Analyst set forth in this subchapter;

(2) complete and submit to the Commission a current Forensic Analyst License Application form;

(3) pay the required fee(s) as applicable:

(A) Initial Application fee of \$220 for Analysts and \$150 for Technicians/Screeners;

(B) Bi-annual renewal fee of \$200 for Analysts and \$130 for Technicians/Screeners;

(C) Temporary License fee of \$100;

(D) Provisional License fee of \$220; or

(E) License Reinstatement Fee of \$220; and

(4) provide documentation that he or she has satisfied all applicable requirements set forth under this section.

(c) Minimum Education Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a baccalaureate or advanced degree in chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(2) Seized Drugs Technician. An applicant for a Forensic Analyst License limited to the seized drug technician category must have a minimum of an associate's degree or equivalent.

(3) Toxicology (Toxicology Analyst (Blood Alcohol Only), Toxicology Analyst (General, Non-interpretive), Toxicologist (Interpretive). An applicant for a Forensic Analyst License in toxicology must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(4) Toxicology Technician. An applicant for a Forensic Analyst License limited to the toxicology technician category must have a minimum of an associate's degree or equivalent.

(5) Forensic Biology (Includes DNA Analyst, Forensic Biology Screener, Nucleic Acids other than Human DNA Analyst, Forensic Biology Technician). An applicant for any category of forensic biology license must have a baccalaureate or advanced degree in a chemical, physical, biological science or forensic science from an accredited university.

(6) Firearm/Toolmark Analyst. An applicant for a Forensic Analyst License in firearm/toolmark analysis must have a high school diploma or equivalent degree or higher (i.e., baccalaureate or advanced degree) if the application is submitted before January 1, 2019. If the application is submitted after January 1, 2019, an applicant

for a Forensic Analyst License in firearm/toolmark analysis must have a baccalaureate or advanced degree in a chemical, physical, biological science, engineering or forensic science from an accredited university.

(7) Firearm/Toolmark Technician. An applicant for a Forensic Analyst License limited to firearm/toolmark technician must have a minimum of a high school diploma or equivalent degree.

(8) Document Examination Analyst. An applicant for a Forensic Analyst License in document examination must have a high school diploma or equivalent degree or higher (i.e., baccalaureate or advanced degree) if the application is submitted before January 1, 2019. If the application is submitted after January 1, 2019, an applicant for a Forensic Analyst License in document examination must have a baccalaureate or advanced degree in a chemical, physical, biological science, engineering or forensic science from an accredited university.

(9) Document Examination Technician. An applicant for a Forensic Analyst License limited to document examination technician must have a minimum of a high school diploma or equivalent degree.

(10) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university. A Materials (Trace) Analyst performing only impression evidence analyses must have a minimum of a high school diploma or equivalent degree.

(11) Materials (Trace) Technician. An applicant for a Forensic Analyst License limited to materials (trace) technician must have a minimum of a high school diploma or equivalent degree.

(12) Foreign/Non-U.S. degrees. The Commission shall recognize equivalent foreign, non-U.S. baccalaureate or advanced degrees. The Commission reserves the right to charge licensees a reasonable fee for credential evaluation services to assess how a particular foreign degree compares to a similar degree in the United States. The Commission may accept a previously obtained credential evaluation report from an applicant or licensee in fulfillment of the degree comparison assessment.

(13) If an applicant does not meet the minimum education qualifications outlined in this section, the procedure in 651.207(k) of this subchapter applies.

(d) Specific Coursework Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must satisfy the specific coursework requirements of the laboratory's accrediting body if the application is submitted before January 1, 2019. If the application is submitted after January 1, 2019, an applicant for a Forensic Analyst License in seized drugs must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to the chemistry coursework, an applicant who submits his or her application after January 1, 2019 must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(2) Toxicology. An applicant for a Forensic Analyst License in toxicology analysis must satisfy the specific coursework requirements of the laboratory's accrediting body if the application is submitted before January 1, 2019. If the application is submitted after January 1, 2019, an applicant for a Forensic Analyst License in toxicology must fulfill required courses as appropriate to the analyst's role and training program as described in the categories below:

(A) Toxicology Analyst (Blood Alcohol Only, Non-interpretive). A toxicology analyst who conducts, directs or reviews the blood alcohol analysis of forensic toxicology samples, evaluates data, reaches conclusions and may

sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must satisfy the specific coursework requirements of the laboratory's accrediting body if the application is submitted before January 1, 2019. If the application is submitted after January 1, 2019, an applicant for a Forensic Analyst License limited to toxicology analysis for blood alcohol only must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university.

(B) Toxicology Analyst (General, Non-interpretive). A toxicology analyst who conducts, directs or reviews the analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete sixteen-semester credit hours (or equivalent) in college-level general and organic chemistry including two three-semester credit hour (or equivalent) college-level courses in analytical chemistry and/or interpretive science courses that may include Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science, Spectroscopic Analysis, Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology.

(C) Toxicologist (Interpretive). A toxicologist who provides interpretive opinions regarding human performance related to the results of toxicological tests (blood alcohol and general) for court or investigative purposes must complete sixteen-semester credit hours (or equivalent) in college-level general and organic chemistry, one three-semester credit hour (or equivalent) course in college-level analytical chemistry (Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science or Spectroscopic Analysis) and one three-semester credit hour (or equivalent) college-level courses in interpretive science (Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology).

(D) An applicant for a toxicology license for any of the categories outlined in (d)(2)(A)-(C) above who submits his or her application after January 1, 2019 must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(3) DNA Analyst. An applicant for a Forensic Analyst License in DNA analysis must demonstrate he/she has fulfilled the specific requirements of the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing effective September 1, 2011. If the application is submitted after January 1, 2019, the applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(4) Firearm/Toolmark Analyst. If the application is submitted after January 1, 2019, the applicant must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(5) Document Examination Analyst. If the application is submitted after January 1, 2019, the applicant must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(6) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) must satisfy the specific coursework requirements of the laboratory's accrediting body if the application is submitted before January 1, 2019. If the application is submitted after January 1, 2019, an applicant for a Forensic Analyst License in materials (trace) for one or more of the chemical analysis categories of analysis (chemical determination, physical/chemical comparison, gunshot residue analysis, and fire debris and explosives analysis) must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to chemistry coursework for the chemical analysis categories, all Materials (Trace) license applicants who submit an application after January 1, 2019 must also

have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. An applicant for a Forensic Analyst License in Materials (Trace) limited to impression evidence is not required to fulfill any specific college-level coursework requirements other than the statistics requirement for applications submitted after January 1, 2019.

(7) Exemptions from specific coursework requirements. The following categories of licenses are exempted from coursework requirements:

(A) An applicant for the technician license category of any forensic discipline set forth in this subchapter is not required to fulfill any specific college-level coursework requirements.

(B) An applicant for a Forensic Analyst License limited to forensic biology screening, nucleic acids other than human DNA and/or Forensic Biology Technician is not required to fulfill the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing or any other specific college-level coursework requirements.

(e) Requirements Specific to Forensic Science Degree Programs. For a forensic science degree to meet the Minimum Education Requirements set forth in this section, the forensic science degree program must be either accredited by the Forensic Science Education Programs Accreditation Commission (FEPAC) or if not accredited by FEPAC, it must meet the minimum curriculum requirements pertaining to natural science core courses and specialized science courses set forth in the FEPAC Accreditation Standards.

(f) Waiver of Specific Coursework Requirements for Lateral Hires and Promoting Analysts. Specific coursework requirements are considered an integral part of the licensing process; all applicants are expected to meet the specific coursework requirements of the forensic discipline(s) for which they are applying or to offer sufficient evidence of their qualifications as described below in the absence of specific coursework requirements. The Commission Director or Designee may waive one or more of the specific coursework requirements outlined in this section for an applicant who:

(1) has five or more years of credible experience in an accredited laboratory in the forensic discipline for which he or she seeks licensure; or

(2) is certified by one or more of the following nationally recognized certification bodies in the forensic discipline for which he or she seeks licensure;

(A) The American Board of Forensic Toxicology;

(B) The American Board of Clinical Chemistry;

(C) The American Board of Criminalistics;

(D) The International Association for Identification; or

(E) The Association of Firearm and Toolmark Examiners; and

(3) provides written documentation of laboratory-sponsored training in the subject matter areas addressed by the specific coursework requirements.

(4) An applicant must request a waiver of specific coursework requirements at the time the application is filed.

(5) An applicant requesting a waiver from specific coursework requirements shall file any additional information needed to substantiate the eligibility for the waiver with the application. The Commission Director or Designee shall review all elements of the application to evaluate waiver request(s) and may grant a waiver(s) to qualified applicants.

(g) General Forensic Analyst Licensing Exam Requirement.

(1) Exam Requirement. An applicant for a Forensic Analyst License must pass the General Forensic Analyst Licensing Exam administered by the Commission.

(A) An applicant is only required to take and pass the General Forensic Analyst Licensing Exam one time.

(B) An applicant may take the General Forensic Analyst Licensing Exam up to three times.

(C) If an applicant fails the General Forensic Analyst Licensing Exam three times, the applicant may apply to the Commission for special dispensation to take the exam again. Upon approval by the Commission, the applicant may sit for the exam more than three times.

(2) Modified General Forensic Analyst Licensing Exam. Technicians in any discipline set forth in this subchapter may fulfill the General Forensic Analyst Licensing Exam requirement by taking a modified exam administered by the Commission.

(h) Knowledge-based Competency Minimum Training Subject Area Requirements.

(1) An applicant must obtain written certification from his or her laboratory's authorized representative that the applicant has been sufficiently trained in all applicable knowledge-based competency subject areas set forth by the Commission in the particular forensic discipline for which the applicant is applying for a Forensic Analyst License, as well as successfully passed any applicable competency test(s) prior to performing testing on a test item or performing specific tasks that create items that could be used for testing. The competency test(s) shall, at a minimum, include practical examination(s) that cover the spectrum of anticipated work to be performed and, if applicable, issuing a test report and providing testimony. Knowledge-based competency components are not intended to measure any individual's technical competency but rather to provide a baseline minimum of subject areas for competency training programs across laboratories.

(2) A signed certification by the laboratory's authorized representative that the applicant has satisfied the knowledge-based competency requirements must be provided on the Knowledge-based Competency Requirements Certification form provided by the Commission. For situations in which a laboratory does not train on a certain subject because the laboratory does not perform analytical work in that area, the laboratory designee may so certify on the Knowledge-based Competency Certification form.

(i) Proficiency Testing Requirement.

(1) An applicant must be routinely proficiency-tested in accordance with and on the timeline set forth by the laboratory's accrediting body proficiency testing requirements.

(2) A signed certification by the laboratory's authorized representative that the applicant has satisfied the applicable proficiency testing requirements of the laboratory's accrediting body as of the date of the analyst's application must be provided on the Proficiency Testing Certification form provided by the Commission. For applicants not yet required to be proficiency tested pursuant to the timeline set forth by the accrediting body, the laboratory's authorized representative shall so certify on the form provided by the Commission.

(j) License Term and Fee.

(1) A Forensic Analyst License shall expire two years from the date the applicant is granted a license.

(2) Application Fee. An applicant or licensee shall pay the following fee(s):

(A) Initial Application fee of \$220 for Analysts and \$150 for Technicians/Screeners;

(B) Bi-annual renewal fee of \$200 for Analysts and \$130 for Technicians/Screeners;

(C) Temporary License fee of \$100;

(D) Provisional License fee of \$220; or

(E) License Reinstatement Fee of \$220.

(F) An applicant who is granted a provisional license and has paid the required fee will not be required to pay an additional initial application fee if the provisional status is removed within one year of the date the provisional license is granted.

(k) Procedure for Denial of Initial Application or Renewal Application and Reconsideration.

(1) Application Review. The Commission Director or Designee must review each initial application or renewal application and determine whether the applicant meets the qualifications and requirements set forth in this subchapter. If a person who has applied for a Forensic Analyst License does not meet the qualifications or requirements set forth in this subchapter and has submitted a complete application, the Director or Designee must consult with members of the Licensing Advisory Committee before denying the application.

(2) Denial of Application. The Commission, through its Director or Designee, may deny an initial or renewal application if the applicant fails to meet any of the qualifications or requirements set forth in this subchapter.

(3) Notice of Denial. The Commission, through its Director or Designee, shall provide the applicant a written statement of the reason(s) for denial of the initial or renewal application.

(4) Request for Reconsideration. Within twenty (20) days of the date of the notice that the Commission has denied the application, the applicant may request that the Commission reconsider the denial. The request must be in writing, identify each point or matter about which reconsideration is requested, and set forth the grounds for the request for reconsideration.

(5) Reconsideration Procedure. The Commission must consider a request for reconsideration at its next meeting where the applicant may appear and present testimony.

(6) Commission Action on Request. After reconsidering its decision, the Commission may either affirm or reverse its original decision.

(7) Final Decision. The Commission, through its Director or Designee, must notify the applicant in writing of its decision on reconsideration within fifteen (15) business days of the date of its meeting where the final decision was rendered.

§651.208. Forensic Analyst License Renewal.

(a) Renewal. The Commission may renew an individual's Forensic Analyst License up to 90 days prior to the expiration of the individual's two-year license term.

(b) Expiration. A Forensic Analyst License or renewed Forensic Analyst License expires two years from the date the initial application was granted.

(c) Effective date. A renewed Forensic Analyst License takes effect on the date the licensee's previous license expires.

(d) Application. An applicant for a Forensic Analyst License renewal shall complete and submit to the Commission a current Forensic Analyst License Renewal Application form provided on the Commission's website, pay the required fee, attach documentation of fulfillment of Continuing Forensic Education requirements set forth in this section, provide an updated copy of the Commission's Proficiency Testing Certification form signed by the licensee's authorized laboratory representative, and complete the mandatory online legal and professional responsibility update described in this section.

(e) Continuing Forensic Education Including Mandatory Legal and Professional Responsibility Update:

(1) Licensees must complete a Commission-sponsored mandatory legal and professional responsibility update by the expiration of each two-year license cycle as provided by the Commission.

(2) Mandatory legal and professional responsibility training topics may include training on current and past criminal forensic legal issues, professional responsibility and human factors, courtroom testimony, disclosure and discovery requirements under state and federal law, and other relevant topics as designated by the Commission.

(3) All forensic analysts shall be required to satisfy the Continuing Forensic Education Requirements published by the Commission. Those requirements shall include (1) minimum number of hours; (2) acceptable type of coursework; (3) assessment mechanisms; and (4) documentation required.

(f) If an applicant fails to fulfill any or all of the requirements pertaining to license renewal, continuing forensic education and the mandatory legal and professional responsibility update, the applicant may apply to the Commission for special dispensation on a form to be provided on the Commission's website. Upon approval by the Commission, the applicant may be allowed an extension of time to fulfill remaining continuing forensic education requirements.

§651.209. Forensic Analyst License Reinstatement.

The Commission may reinstate an inactive or expired analyst's Forensic Analyst License upon fulfillment of the following requirements by the licensee:

(1) submission of a signed Did Not Practice form provided by the Commission, stating that the licensee has not represented himself or herself as a forensic analyst in Texas, whether through testimony, interpretation, technical review or forensic analysis during the inactive license period;

(2) payment of a \$220 license reinstatement fee; and

(3) updating of current continuing forensic education requirements status with the Commission.

§651.210. Provisional Forensic Analyst License.

(a) Issuance. The Commission may issue a provisional Forensic Analyst License.

(b) Eligibility. An individual may apply to the Commission for a provisional Forensic Analyst License if the individual meets the following qualifications:

(1) applicant is currently employed in an accredited laboratory for which the licensing requirements of this subchapter apply; or

(2) applicant was previously employed in an accredited laboratory for which the licensing requirements of this subchapter did not apply and the applicant was approved for independent casework by the laboratory; and

(3) applicant cannot meet one or more of the forensic analyst license requirements set forth in this subchapter at the time of application but plans to meet all the requirements within the one-year provisional license period and meets all other requirements described in §651.207 of this subchapter.

(c) Application. An applicant for a provisional Forensic Analyst License shall complete and submit to the Commission a current Provisional Forensic Analyst License Application form, pay the required fee and submit a signed statement on a form to be provided by the Commission stating he or she has fulfilled the eligibility requirements of this section.

(d) Provisional License Term. A provisional Forensic Analyst License is granted for a period of one year from the date of issuance.

(e) Scope of Provisional License. A provisionally licensed forensic analyst may technically review or perform forensic analysis or draw conclusions from or interpret a forensic analysis for a court or crime laboratory to the extent a fully licensed forensic analyst may perform these duties.

§651.211. Temporary Forensic Analyst License.

(a) Issuance. The Commission may issue a temporary Forensic Analyst License.

(b) Eligibility. An individual who performs forensic analysis primarily for non-Texas cases may apply to the Commission for a temporary Forensic Analyst License for forensic analysis related to a single criminal action as that term is defined in Article 38.35 of the Texas Code of Criminal Procedure.

(c) Multiple Applications for Temporary License for More than One Criminal Action. An applicant may apply for a temporary Forensic Analyst License for each criminal action for which he or she is retained to perform forensic analysis.

(d) Multiple Defendants for Same Criminal Action. An applicant for a temporary Forensic Analyst License is not required to apply for more than one temporary license for the forensic analysis performed in criminal actions for which multiple defendants may be charged for a criminal offense or offenses related to the same event.

(e) Application. An applicant for a temporary Forensic Analyst License shall complete and submit to the Commission a current temporary Forensic Analyst License Application form, pay the required fee, and submit a signed statement on a form to be provided by the Commission stating the individual is employed by a crime laboratory that is accredited by a national accrediting body recognized by the Commission and regularly performs proficiency testing in accordance with the employing laboratory's accreditation requirements.

(f) Description of Forensic Analysis for Which the temporary Forensic Analyst License is Requested. An applicant for a temporary Forensic Analyst License shall describe the circumstances of the criminal action for which the temporary Forensic Analyst License is being requested.

(g) Affidavit of Good Standing from Laboratory. An applicant for a temporary Forensic Analyst License must submit an affidavit of good standing from the laboratory where the analyst is currently employed.

(h) Temporary License Term. A temporary Forensic Analyst License is granted for a period of three years from the date of issuance.

(i) Temporary License Extension. If the criminal action for which the temporary Forensic Analyst License was originally granted has not yet been resolved upon the expiration of three years from the date the license was granted, the temporary licensee may apply to the Commission to extend the license for a supplemental one-year term or terms.

(j) Temporary License Limitations. A temporary Forensic Analyst License does not apply to any criminal action other than those offenses related to the criminal action for which the temporary license was granted.

(k) Scope of Temporary License. A temporarily licensed forensic analyst may technically review or perform forensic analysis or draw conclusions from or interpret a forensic analysis for a court or crime laboratory to the extent a fully licensed forensic analyst may perform these duties.

§651.212. Licensing of Military Service Members, Military Veterans, and Military Spouses.

(a) Definitions. The terms “active duty,” “military service member,” “military spouse,” and “military veteran” have the meaning assigned by the Texas Occupations Code Title 2, §55.001.

(b) Exemption from Penalty for Failure to Renew License. All active duty, military service members, and military spouses who hold a Forensic Analyst License are exempt from any increased fee or other penalty imposed by the Commission for failing to renew his/her license in a timely manner if the individual establishes to the satisfaction of the Commission that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

(c) Extension of License Renewal Deadlines for Military Service Members. A military service member who holds a Forensic Analyst License is entitled to two years of additional time to complete:

(1) any continuing education requirements; and

(2) any other requirement related to the renewal of the military service member’s license.

(d) Alternative Licensing for Military Service Members, Military Veterans, and Military Spouses. The Commission shall issue a license to an applicant who is a military service member, military veteran, or military spouse who:

(1) holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state; or

(2) within the five years preceding the application date held the license with this state; and

(3) the Commission Presiding Officer or Designee may waive any prerequisite to obtaining a license for an applicant described in this subsection after reviewing the applicant’s credentials.

(e) License Eligibility Requirements for Applicants with Military Experience. Notwithstanding any other law, the Commission shall credit verified military service, training or education toward the licensing requirements, other than the general forensic examination requirement, for a Forensic Analyst License.

(f) License Application and Examination. Notwithstanding any other law, the Commission shall waive the license application and any examination fees paid to the Commission for an applicant who is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(2) a military service member or military veteran who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(g) Notice of Chapter Provisions. The Commission shall prominently post a notice on the home page of the Commission’s website describing the provisions of this subchapter that are available to military service members, military veterans, and military spouses.

§651.213. Examination on Religious Holy Day; Other Examination Accommodations.

(a) Reasonable Accommodations. The Commission and laboratories administering the general forensic examination shall administer the examination to all eligible applicants in a reasonable manner, while maintaining the integrity of the examination. In each location where the examination is administered, either the Commission or the laboratory administering the examination must ensure the facilities are reasonably accessible and enable persons having disabilities to take the examination.

(b) Applicants Requiring Special Testing Accommodations. Any applicant who desires special testing accommodations based upon a disability shall submit a written request to the Commission on the Commission's designated Special Accommodations Request Form at the same time the applicant submits his/her application for a Forensic Analyst License.

(1) Requests for special testing accommodations must be accompanied by written proof evidencing the existence of the disability, including a statement from a licensed physician or a professional specialist that specifically sets forth the physical, mental or emotional handicap or disability and the relationship between the disability and the inability to take the examination under standard conditions.

(2) The Commission may require additional information or evidence from the applicant and may, at its option, seek professional evaluation of such data.

(3) The applicant will be responsible for the cost of obtaining documented medical evidence and other required information.

(4) After considering the written request of the applicant and the evidence submitted, the Commission shall determine what reasonable special testing accommodations will be granted.

(5) Commission deliberations and determinations regarding the request of an applicant for testing accommodations on an examination shall be closed to the public and associated records are confidential. However, this does not limit the Commission's option under paragraph (2) of this subsection to seek professional evaluation of documented medical evidence and other required information.

(c) Examination Scheduled on Religious Holy Day. An examinee who wishes to observe a religious holy day on which the person's religious beliefs prevent the person from taking a scheduled general forensic examination shall be permitted to take the examination on a different date.

(d) Examination Accommodations for Persons with Dyslexia. For each general forensic examination, the Commission shall provide reasonable examination accommodations to an examinee diagnosed as having dyslexia. An examinee requesting examination accommodations for dyslexia must follow the same process for special testing accommodations set forth in subsection (b) of this section.

§651.214. Licensing Advisory Committee.

The Commission shall establish an advisory committee to advise the Commission and make recommendations on matters related to the licensing of forensic analysts as set forth in Article 38.01, Code of Criminal Procedure.

§651.215. Disciplinary Action.

(a) The Commission may take disciplinary action against a license holder under certain limited circumstances as set forth in Article 38.01, Code of Criminal Procedure.

(b) Professional Misconduct Finding. On a determination by the Commission that a license holder has committed professional misconduct in accordance with the definition provided in §651.202 of this subchapter and under Article 38.01, Code of Criminal Procedure or violated Article 38.01, Code of Criminal Procedure, or a rule or order of the Commission under Article 38.01, Code of Criminal Procedure, the Commission may:

(1) revoke or suspend the person's license;

(2) refuse to renew the person's license; or

(3) reprimand the license holder.

(c) Probation. The Commission may place on probation a person whose license is suspended. If a license suspension is probated, the Commission may require the license holder to:

(1) report regularly to the Commission on matters that are the basis of the probation; or

(2) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the Commission in those areas that are the basis of the probation.

(d) State Office of Administrative Hearings. Disciplinary proceedings of the Commission are governed by Chapter 2001, Government Code. A hearing under this section shall be conducted by an administrative law judge of the State Office of Administrative Hearings.

(e) State Office of Administrative Hearings procedural rules governed by Chapter 2001, Government Code apply to the extent not inconsistent with Commission rules in this subchapter.

(f) Proposals for decision issued by a State Office of Administrative Hearings judge shall be considered by the Commission to be proposals for final decision and either adopted, changed or reversed by the Commission to the extent permitted by Chapter 2001, Government Code.

(g) Procedure for Opportunity for Hearing and Participation and Notice of Disciplinary Action. If revocation, suspension, reprimand, refusal to renew or probation of a Forensic Analyst License is proposed by the Commission based on subsection (b) of this section, the Commission shall, within ten business (10) days, give written notice of the basis of the proposal and state that the licensee or applicant must request, in writing, a hearing within thirty (30) business days of receipt of the notice, or the right to a hearing shall be waived and the disciplinary action stands.

(h) Notice of Hearing; Contents. The Commission shall provide timely notice of any scheduled hearing related to disciplinary action taken by the Commission to the person or party against which the action is taken. The notice must include:

(1) a statement of the time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) either;

(A) a short, plain statement of the factual matters asserted; or

(B) an attachment that incorporates by references the factual matters asserted in the complaint or petition filed with the Commission.

(i) Limited Statement. If the Commission is unable to state factual matters in detail at the time notice is served, an initial notice may be limited to a statement of the issues involved. On timely written application by a licensee, a more definite and detailed statement of the facts shall be furnished not less than seven (7) days before the date set for the hearing.

(j) Right to Counsel. Each party in a contested case is entitled to the assistance of counsel before the Commission. The Commission is not responsible for any legal fees. A party may expressly waive the right to assistance of counsel.

(k) Appeals. Any appeals shall be resolved in accordance with Chapter 2001, Government Code.

(l) License Status.

(1) If a license holder makes timely and sufficient application for the renewal of a license, the existing license does not expire until the application has been finally determined by the Commission. If the application is denied or the terms of the new license are limited, the existing license does not expire until the last day for seeking review of a Commission decision or a later date fixed by order of the reviewing court.

(2) A revocation, suspension, annulment, or withdrawal of a license is not effective unless, before institution of Commission proceedings:

(A) the Commission gives notice by personal service or by registered or certified mail to the license holder of facts or conduct alleged to warrant the intended action; and

(B) the license holder is given an opportunity to show compliance with all requirements of law for the retention of the license.

(3) A Forensic Analyst License remains valid unless it expires without timely application for renewal, is amended, revoked, suspended, annulled or withdrawn, or the denial of a renewal application becomes final. The term or duration of a license is tolled during the period the license is subjected to judicial review. However, the term or duration of a license is not tolled if, during judicial review, the licensee engages in the activity for which the license was issued.

(m) Interpreters for Deaf or Hearing Impaired Parties and Witnesses.

(1) In contested cases, the Commission shall provide an interpreter whose qualifications are approved by the Texas Department of Assistive and Rehabilitative Services to interpret the proceedings for a party or subpoenaed witness who is deaf or hearing impaired.

(2) In this section, "deaf or hearing impaired" means having a hearing impairment, whether or not accompanied by a speech impairment, that inhibits comprehension of the proceedings or communication with others.

(n) Informal Disposition of Contested Case. Unless precluded by law, an informal disposition may be made of a contested case by:

(1) stipulation;

(2) agreed settlement;

(3) consent order; or

(4) default.

§651.216. Ineligibility for License Based on Criminal Conviction.

(a) A proceeding before the Commission to establish factors required to be considered under this section is governed by Chapter 2001, Government Code.

(b) Guidelines for consideration of criminal convictions. If an applicant has a criminal conviction above a Class C misdemeanor, the applicant may not be qualified to hold a forensic analyst license.

(1) Convictions that may trigger a denial. The Commission may suspend or revoke a forensic analyst license, disqualify a person from receiving a license, refuse to renew a person's license or deny to a person the opportunity to take the general forensic licensing examination on the grounds the person has been convicted of:

- (A) an offense that directly relates to the duties and responsibilities associated with an analyst's license;
- (B) an offense that does not directly relate to the duties and responsibilities associated with an analyst's license and that was committed less than five years before the date the person applies for a license;
- (C) an offense listed in Article 42A.054, Code of Criminal Procedure; or
- (D) a sexually violent offense as defined by Article 62.001, Code of Criminal Procedure.

(2) A forensic analyst license holder's license may be revoked on the license holder's imprisonment following a felony conviction, felony community supervision, revocation of parole, or revocation of mandatory supervision.

(3) An offense from another state containing elements substantially similar to the enumerated offenses under the Texas Penal Code shall be considered under this section the same way as the offense would have been considered had it been committed in Texas.

(4) Offenses that apply to category paragraph (1)(A) of this subsection because they directly relate to the duties and responsibilities associated with an analyst's license may include, but are not limited to:

- (A) Misrepresentation (e.g., fraud, extortion, bribery, theft by check, and deceptive business practices);
- (B) Failure to register as a sex offender (as required by the Texas Code of Criminal Procedure, Chapter 62);
- (C) Property Crimes, such as theft or burglary;
- (D) Crimes against persons, such as homicide, kidnapping, and assault;
- (E) Drug crimes, such as possession;
- (F) Multiple DWI and DUI crimes;
- (G) All felony convictions; and
- (H) Misdemeanors above a Class C misdemeanor and felony convictions considered by Texas courts to be crimes of moral turpitude.

(5) Consequences. In the event of a criminal conviction, the Commission may take one of the following courses of action:

- (A) Declare a prospective applicant unsuitable for a license;
- (B) Deny a renewal application for an existing license;
- (C) Revoke or suspend an existing license; or
- (D) Deny a person the opportunity to take the general forensic analyst licensing examination.

(6) Determining whether there are grounds to deny. There are four general factors the Commission considers in determining whether a particular criminal conviction should be grounds to deny, revoke or suspend a license:

- (A) the nature and seriousness of the crime;
- (B) the relationship of the crime to the purposes for requiring a license to engage in the analyst's occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and  
(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharges the responsibilities of the analyst's work.

(7) Determining an applicant's fitness to perform the duties. In determining an applicant's fitness to perform the duties and discharge the responsibilities of a forensic analyst who has been convicted of a crime, the Commission considers, in addition to the factors listed in paragraph (5) of this subsection:

(A) the extent and nature of the person's past criminal activity;  
(B) the age of the person when the crime was committed;  
(C) the amount of time that has elapsed since the person's last criminal activity;  
(D) the conduct and work activity of the person before and after the criminal activity;  
(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and  
(F) other evidence of the person's fitness, including letters or recommendations from:

(i) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility to the person;  
(ii) the sheriff or chief of police in the community where the person resides; and  
(iii) any other person in contact with the convicted person.

(8) An applicant has the responsibility, to the extent possible, to obtain and provide to the Commission the recommendations of the prosecution, law enforcement, and correctional authorities as required by paragraph (7) (F)(i)-(iii) of this subsection.

(9) In addition to fulfilling the requirements of paragraph (8) of this subsection, the applicant shall furnish proof in the form required by the Commission that the applicant has:

(A) maintained a record of steady employment;  
(B) supported the applicant's dependents;  
(C) maintained a record of good conduct; and  
(D) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

(c) Notice and Review of Suspension, Revocation or Denial of License. If the Commission suspends or revokes a license or denies a person a license or the opportunity to be examined for a license because of the person's prior conviction of a crime and the relationship of the crime to the license, the Commission shall notify the person in writing of:

(1) the reason for the suspension, revocation, denial, or disqualification;  
(2) the review procedure provided by §651.217(d)-(g) of this subchapter; and  
(3) the earliest date the person may appeal the action of the Commission.

(d) Judicial Review. A person whose license has been suspended or revoked or who has been denied a license or the opportunity to take the general examination as set forth in this subchapter and who has exhausted the person's administrative appeals may file an action in district court in Travis County for review of the evidence presented to the Commission and the decision of the Commission.

(e) A petition for judicial review must be filed not later than the 30<sup>th</sup> day after the date the Commission's decision is final and appealable.

§651.217. Preliminary Evaluation of License Eligibility Based on Criminal History.

(a) Request for Criminal History Evaluation Letter. A person may request the Commission issue a criminal history evaluation letter regarding the person's eligibility for a license if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for initial license or is planning to take the examination for an initial license; and

(2) has reason to believe he or she is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) The request must state the basis for the person's potential ineligibility.

(c) Authority to Investigate. The Commission has the same powers to investigate a request submitted under this section and the requestor's eligibility that the Commission has to investigate a person applying for a license.

(d) Determination of Eligibility; Letter. If the Commission determines that a ground for ineligibility exists, the Commission shall notify the requestor in writing of the Commission's determination on each ground of potential ineligibility.

(e) If the Commission determines that the requestor is ineligible for a license, the Commission shall issue a letter setting out each basis for potential ineligibility and the Commission's determination as to eligibility. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the Commission at the time the letter is issued, the Commission's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

(f) The Commission must provide notice of determination of eligibility or ineligibility not later than the 90<sup>th</sup> day after the date the Commission receives the request.

(g) The Commission may charge a person requesting an evaluation under this section a \$25 fee. Fees adopted by the Commission under this section must be in an amount sufficient to cover the cost of administering this section.

§651.218. Code of Professional Responsibility.

(a) Code of Professional Responsibility for Forensic Analysts and Crime Laboratory Management Subject to the Jurisdiction of the Texas Forensic Science Commission. The Code of Professional Responsibility (“Code”) for forensic analysts and crime laboratory management defines a framework for promoting integrity and respect for the scientific process and encouraging transparency in forensic analysis in Texas. Because certain components of the Code are best suited to individual forensic analysts while others are best suited to laboratory management, the Code is divided into two sections.

(b) Each forensic analyst shall:

(1) Accurately represent his/her education, training, experience, and areas of expertise.

(2) Commit to continuous learning in the forensic disciplines and stay abreast of new findings, equipment and techniques to maintain professional competency.

(3) Promote validation and incorporation of new technologies, guarding against the use of non-valid methods in casework and the misapplication of validated methods.

(4) Avoid tampering, adulteration, loss, or unnecessary consumption of evidentiary materials.

(5) Avoid participation in any case where there are personal, financial, employment-related or other conflicts of interest.

(6) Conduct thorough, fair and unbiased examinations, leading to independent, impartial, and objective opinions and conclusions.

(7) Make and retain full, contemporaneous, clear and accurate written records of all examinations and tests conducted and conclusions drawn, in sufficient detail to allow meaningful review and assessment by an independent person competent in the field.

(8) Base conclusions on procedures supported by sufficient data, standards and controls, not on political pressure or other outside influence.

(9) Not offer opinions or conclusions that are outside one’s expertise.

(10) Prepare reports in clear terms, distinguishing data from interpretations and opinions, and disclosing any relevant limitations to guard against making invalid inferences or misleading the judge or jury.

(11) Not issue reports or other records, or withhold information from reports for strategic or tactical litigation advantage.

(12) Present accurate and complete data in reports, oral and written presentations and testimony based on good scientific practices and valid methods.

(13) Testify in a manner which is clear, straightforward and objective, and avoid phrasing testimony in an ambiguous, biased or misleading manner.

(14) Retain any record, item or object related to a case, such as work notes, data, and peer or technical review information due to potential evidentiary value and pursuant to the laboratory's retention policy.

(15) Communicate honestly and fully with all parties (investigators, prosecutors, defense attorneys, and other expert witnesses), unless prohibited by law.

(16) Document and notify management or quality assurance personnel of adverse events, such as an unintended mistake or a breach of ethical, legal, scientific standards, or questionable conduct.

(17) Ensure reporting, through proper management channels, to all impacted scientific and legal parties of any adverse event that affects a previously issued report or testimony.

(c) Members of crime laboratory management shall:

(1) Encourage a quality-focused culture that embraces transparency, accountability and continuing education while resisting individual blame or scapegoating.

(2) Provide opportunities for forensic analysts to stay abreast of new scientific findings, technology and techniques while guarding against the use of non-valid methods in casework, the misapplication of validated methods or improper testimony regarding a particular analytical method or result.

(3) Maintain case retention and management policies and systems based on the presumption that there is potential evidentiary value for any information related to a case, including work notes, data, and peer or technical review.

(4) Provide clear communication and reporting systems through which forensic analysts may report to management non-conformities in the quality system and other adverse events, such as an unintended mistake or a breach of ethical, legal, scientific standards, or questionable conduct.

(5) Make timely and full disclosure to the Texas Forensic Science Commission of any non-conformance that may rise to the level of professional negligence or professional misconduct.

(6) Provide copies of all substantive communications with the laboratory's national accrediting body to the Commission.

(7) For any laboratory that performs forensic analysis on behalf of the State of Texas, develop and follow a written forensic disclosure compliance policy for the purpose of ensuring the laboratory's compliance with article 39.14 of the Texas Code of Criminal Procedure.

(8) Ensure the laboratory's forensic disclosure policy provides clear instructions for identifying and disclosing any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the laboratory. The policy should explicitly address how to inform potentially affected recipients of any non-conformances or breaches of law or ethical standards that may adversely affect either a current case or a previously issued report or testimony.

(9) Inform all forensic analysts working on behalf of the laboratory that they may report allegations of professional negligence or professional misconduct to the Texas Forensic Science Commission without fear of adverse employment consequences.